

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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CELINA ROBERTS, ANTHONY SCIOTTO,
ERIC BURNS, KERI DICKEY, ANGELA
RAMIREZ, DIANA SANTILLAN, CAMILLE
GHANEM, ARNOLD WILLIAMS,
and OLUWATOSIN BABALOLA, individually,
and on behalf of other persons similarly situated,

Plaintiffs,

CIVIL ACTION NO. 1:13-CV-13142

v.

THE TJX COMPANIES, INC., a Delaware
Corporation; MARSHALLS OF MA, INC.,
a Massachusetts Corporation; MARMAXX
OPERATING CORP., a Delaware Corporation,
d/b/a MARSHALLS HOMEGOODS, d/b/a
MARSHALLS, d/b/a T.J. MAXX HOMEGOODS;
HOMEGOODS, INC., a Delaware Corporation;

Defendants.

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**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS AND COLLECTIVE ACTION SETTLEMENT**

Plaintiffs Celina Roberts, Anthony Sciotto, Eric Burns, Keri Dickey, Angela Ramirez, Diana Santillan, Camille Ghanem, Tommy Zahtila, and Gianfranco Pirolo ("Plaintiffs"), by and through their counsel, hereby move the Court for preliminary approval of the class and collective action settlement with set forth in the Stipulation and Settlement Agreement ("Settlement Agreement") attached as Exhibit 1 to the accompanying Declaration of Seth R. Lesser filed contemporaneously herewith ("Lesser Dec."). Defendants The TJX Companies, Inc., Marshalls of MA, Inc., Marmaxx Operating Corp., and Homegoods, Inc. ("Defendants") do not oppose this motion.

Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order, consented to by Defendants and attached as Exhibit XX to the Lesser Dec. (“Preliminary Approval Order”), which, *inter alia*: (1) asserts jurisdiction over the ASM Claims¹, the Parties in this action, and the implementation and administration of the Settlement Agreement; (2) adjudges the terms of the Settlement Agreement to preliminarily be fair, reasonable and adequate, and in the best interests of Plaintiffs and members of the Settlement Classes, and directs consummation of its terms and provisions; (3) conditionally certifies the New York State Law Settlement Class pursuant to Fed. R. Civ. P. 23 for settlement purposes only; (4) conditionally appoints Celina Roberts, Anthony Sciotto, Eric Burns, Keri Dickey, Angela Ramirez, Diana Santillan, Camille Ghanem, Tommy Zahtila, and Gianfranco Pirolo as Plaintiffs who, together with Plaintiffs’ counsel, shall be authorized to act on behalf of all members of the Settlement Classes with respect to the ASM Claims; (5) for the purposes of settlement only, conditionally finding that Plaintiffs’ Counsel are adequate to serve as Class Counsel and conditionally appointing the following as “Class Counsel” pursuant to Fed. R. Civ. P. 23(g): Sara Wyn Kane, Robert J. Valli, Jr., and James A. Vagnini of VALLI KANE & VAGNINI LLP, Seth R. Lesser, Fran L. Rudich and Christopher M. Timmel of KLAFTER OLSEN & LESSER LLP, Sam J. Smith and Loren B. Donnell of BURR & SMITH, LLP, Hillary Schwab of FAIR WORK, P.C., Cyrus Mehri and Michael D. Lieder of MEHRI & SKALET, PLLC, Marc S. Hepworth, Charles Gershbaum, and David A. Roth of HEPWORTH, GERSHBAUM & ROTH, PLLC, Gregg Shavitz, Camar Jones, and Alan L. Quiles of SHAVITZ LAW GROUP, PA, Emily E. Smith-Lee of SLN LAW, LLC, and Jay D. Ellwanger of ELLWANGER LAW, LLP; (6) approves the content of the Settlement Notice, authorizing the first-class mailing of the Settlement Notice to all members of the New

¹ Capitalized terms in this Motion shall have the meaning assigned to them in the Appendix to the Settlement Agreement titled “Definitions to Stipulation and Settlement Agreement.”

York State Law Settlement Class twenty (20) calendar days after the entry of the Preliminary Approval Order, finding that the method of dissemination of the Settlement Notice is the best practicable means of distributing the Settlement Notice to members of the New York State Law Settlement Class, and after the Claims Administrator finalizes the class data pursuant to the schedule set forth in the Settlement Agreement; (7) approves and appoints the Claims Administrator in accordance with the terms of the Settlement Agreement; (8) sets a forty-five (45) calendar day deadline for the submission of Requests for Exclusion or objections by members of the New York State Law Settlement Class; (9) approves the Request for Exclusion process set forth in the Settlement Agreement; (10) orders that any member of the New York State Law Settlement Class who is also a member of the FLSA Collective and Opt-Outs of the New York State Law Settlement Class shall be deemed to have withdrawn that consent and shall no longer be a member of the FLSA Collective for any purpose; (11) orders that any member of the New York State Law Settlement Class who does not properly and timely Opt-Out shall be bound by all the terms and provisions of the Settlement Agreement, the Final Approval Order, the Final Judgment, and the releases set forth therein; (12) orders that any member of the New York State Law Settlement Class who validly and timely becomes an Opt-Out shall not: (i) have any rights under the Settlement Agreement; (ii) be entitled to receive a Settlement Payment; (iii) have a right to object to the Settlement Agreement; and (iv) be bound by the Settlement Agreement, any Final Approval Order, or the Final Judgment; (13) approves the objection process set forth in the Settlement Agreement; and (14) sets the Final Approval Hearing for a date in January 2021.

In support of this relief, Plaintiffs have contemporaneously filed a memorandum of law in support of this motion for preliminary approval of the class and collective action settlement.

Date: July 20, 2020

Respectfully submitted,

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/s/ Seth R. Lesser

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CERTIFICATE OF CONFERENCE

Though Defendants would, in the course of litigation, vigorously oppose the merits of the Plaintiffs' claims, seek the decertification of the FLSA collective in this action, and oppose the certification of the putative New York state law class under Federal Rule of Civil Procedure 23, they do not oppose the instant motion for preliminary approval of the proposed Settlement or the certification of the proposed New York State Law Settlement Class for settlement purposes only. To the extent that the Court does not grant preliminary or final approval of the proposed Settlement, Defendants reserve the right to raise any argument with respect to the merits of the Plaintiffs' claims or the appropriateness of the final certification of the FLSA collective or the certification of the putative Rule 23 New York state law class that they might have otherwise undertaken in litigation, or to make arguments that are contrary to the positions taken by the Plaintiffs in this memorandum.

/s/ Seth R. Lesser

Seth R. Lesser

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Seth R. Lesser, hereby certify that a true copy of the above document filed through the ECF system will be electronically sent to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on July 20, 2020.

/s/ Seth R. Lesser

Seth R. Lesser

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